

## **REMARKS/ARGUMENTS**

Claims 1-18 are pending in the application. Reconsideration in view the following remarks is respectfully requested. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook, et al., US Patent Number 5,966,304.

Applicants respectfully submit that nowhere in the cited references is the disclosure, teaching or suggestion of: “[a] method of upgrading application software on a fault tolerant system having a first engine and a second engine, the first and second engine executing an application, the method comprising: taking the second engine out of service; upgrading the application on the second engine; assigning the second engine as a standby engine to the first engine and receiving run state updates from the first engine; assigning the first engine as the standby engine to the second engine and receiving run state updates from the second engine; and upgrading the application on the first engine” (e.g., as described in claim 1).

The Office Action further asserts that Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. The Office asserts that Cook terms this as qualification (lines 3-8 of column 6), and it can occur once the upgrade controller is plugged back into the back plane (lines 33-55 of column 9). Lines 3-8 of column 6 state:

This coordination of the controllers 12a and 12b is provided by a process termed "qualification" in which there is a cross-loading of the memories 56 of the first controller 12a and the second controller 12b. Qualification is followed by a constant updating of the I/O tables as they change (synchronism).

Lines 33-55 of column 9 purport to describe steps to upgrade a functional module and are summarized as follows:

1. The module 16a is removed from the rack 14 of processor 12a.
2. Module 16a is upgraded in hardware or firmware while control continues in controller 12b with the controller 12a disqualified.
3. Module 16a is re-installed in controller 12a.
4. Corresponding module 16b to the one upgraded in the controller 12a is removed from controller 12b.
5. Module 16b is upgraded in hardware or firmware while control continues in controller 12a with the controller 12b disqualified.
6. Module 16b is re-installed in controller 12b.

It is apparent that lines 33-55 of column 9 of Cook merely discloses a method by which two controllers can be upgraded through the use of sequential disqualification. However, it is equally clear that nowhere in the cited sections of Cook is the teaching suggestion or disclosure of “[a] method of upgrading application software on a fault tolerant system having a first engine and a second engine, the first and second engine executing an application, the method comprising: ... assigning the first engine as the standby engine to the second engine *and receiving run state updates from the second engine...*”.

Moreover, it is also clear from the cited section (lines 3-8 of column 6) of Cook that the section is merely intended to disclose the cross loading of memories (along with a constant updating of the I/O tables as they change). However, again, these sections do not teach suggest or disclose “... assigning the first engine as the standby engine to the second engine *and receiving run state updates from the second engine...*”. Support for this limitation can be found in the description of Figure 4 beginning at line 12 of page 11 and Figure 6 beginning at line 7 of page 12. Specifically, line 13 of page 12 states:

At step 200, computer system 100 is in an initial state. In this state, processor 121 is an active processor and processor 122 is a standby processor acting as a backup to processor 121. Processors 121, 122 each execute Version 1.0 of the software to be upgraded. *Processor 121 keeps processor 122 in synchronization by generating run time state updates such as described in Fig. 4. The rolling upgrade is intended to upgrade system 100 of software Version 2.0.*

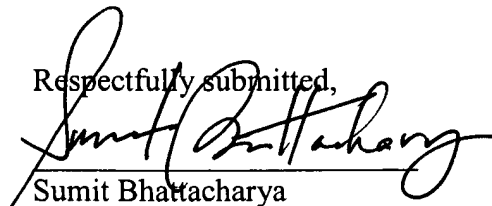
Therefore, since each and every limitation is not taught or suggested in the Cook reference, independent claim 1 is in condition for allowance and the 35 U.S.C. 102(b) rejection should be withdrawn. Independent claims 11 and 15 include similar limitations and therefore are also in condition for allowance and the 35 U.S.C. 102(b) rejection should be withdrawn. Claims 2-10, 12-14 and 16-18 depend from allowable independent claims and therefore are allowable as well.

For at least all the above reasons, the Applicants respectfully submit that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any matter concerning this application. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. **11-0600**.

Dated: December 28, 2004

KENYON & KENYON  
333 W. San Carlos St., Suite 600  
San Jose, CA 95110  
Telephone: (408) 975-7500  
Facsimile: (408) 975-7501

Respectfully submitted,  
By:   
Sumit Bhattacharya  
(Reg. No. 51,469)  
Attorneys for Intel Corporation